



RSC Policy Brief: Government Shutdowns

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Although negotiations continue, it appears possible that a gap in federal government funding will occur in the days ahead. This RSC Policy Brief is designed to answer the many questions that have arisen on the causes, effects, and history of government shutdowns. The RSC has provided further information on what federal government activities continue during a shutdown [here](#), and information on the fiscal situation in 1995 as compared to today [here](#).

What Is a Shutdown? When an agency of the federal government has not been appropriated funds beyond a certain date by an act of Congress and the President, a funding gap occurs. During a funding gap, federal agencies are forbidden to continue operation and must “shutdown,” furloughing employees and suspending all official activity. A government shutdown is a colloquial term for a period when all or a significant number of federal agencies enter a funding gap and shut down due to the lack of passage of the necessary appropriations bills.

Have Shutdowns Occurred in the Past? Since 1977, the government has shut down on seventeen occasions. There were six shutdowns during the Carter Administration, all of them lasting for more than a week and one for seventeen days. There were eight shutdowns during the Reagan Administration, none longer than three days, and one three-day shutdown during the first Bush Administration. The two most recent government shutdowns occurred when President Bill Clinton and Congressional Republicans were unable to complete the appropriations process and come to agreement on a balanced budget plan in 1995 and 1996. The first lasted for five days in November, and the second for twenty-one days in December and January.

Why Is a Shutdown Required? Agency shutdowns are required during funding gaps because appropriation (or outlay, a payment from the Treasury) of federal funds is prohibited by the Constitution except when authorized by law (Article 1, Section 9: “no money shall be drawn from the Treasury, but in consequence of appropriations made by law”). Although appropriation of funds (or outlays) is forbidden during a funding gap, there is no explicit constitutional ban on the obligation of funds – an act binding the government to make future payment – by accepting labor or entering into a contract. Congress and the President have acted, however, to prevent the obligation of funds when

appropriated funds are absent by enacting several provisions of law which are known together as the Antideficiency Act. The Antideficiency Act prohibits agencies from obligating funds before appropriations have been authorized by law, and therefore requires them to suspend all activities during a funding gap.

What Is the Antideficiency Act? The Antideficiency Act is a collection of numerous provisions of law enacted over nearly a century beginning in 1870 and ending in 1957 that is a major aspect of Congress's ability to limit the Executive Branch's spending of federal funds.¹ The law prohibits outlays in excess of funds appropriated, involving the government in a contract or obligation to pay money in advance of appropriations, and accepting voluntary services for the United States or employing persons in excess of the number allowed by law.

Why Are Employees Furloughed During a Government Shutdown and Are Any Exempt? Employee furloughs during an agency shutdown are due to the Antideficiency Act's prohibition of obligating the government to pay future funds; accepting an individual's labor obligates the federal government to pay them in the future. The Act also prohibits the acceptance of volunteer labor. The Act does provide an exception for the acceptance of labor involving the safety of human life or the protection of property.

Who Determines Who Meets the Safety and Protection Exemption? Each federal agency is responsible for determining which agency staff, if any, meets the exemption requirements. They make such determinations in coordination with the Office of Management and Budget (OMB), which issues annual instructions for creating a funding gap contingency plan to each agency. Those instructions, based on two opinions issued by the Attorney General during the Carter Administration on the Antideficiency Act, inform agencies that they may retain only such personnel as are necessary to terminate an agency's traditional activities, for only as long as is necessary draw them down, or to maintain activities directly related to the protection of life and property.

What Activities Are Considered Directly Related to Protecting Life and Property? An OPM memorandum from 1981, which remained in effect during the last government shutdown in 1996, provided the following determination of exempt activities:

Primary examples of activities agencies may continue are those which may be found under applicable statutes to:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
 - a. Medical care of inpatients and emergency outpatient care;

¹ See Page [6-34](#).

- b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
- c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;
- d. Border and coastal protection and surveillance;
- e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
- f. Care of prisoners and other persons in the custody of the United States;
- g. Law enforcement and criminal investigations;
- h. Emergency and disaster assistance;
- i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;
- j. Activities that ensure production of power and maintenance of the power distribution system; and
- k. Activities necessary to maintain protection of research property.

How Many Federal Employees Will Be Furloughed? Because each agency's contingency plan is kept private, it is very difficult to estimate the number of employees affected by a shutdown. During the first, broader shutdown in 1995, an estimated 800,000 employees were furloughed out of 2,858,000, but that figure should be considered to be of limited value.

What Activities Are Not Exempt and Would Cease During a Shutdown? If a shutdown were to occur because of a funding gap, many federal activities would cease. During the most recent shutdown of 21 days in 1995-1996, all national parks, museums, and monuments were closed, 20% of federal contracts were affected in some way, and processing of visa and passport requests ceased. New patients were not accepted into clinical trials at the National Institutes of Health, and the Centers for Disease Control and Prevention ceased disease surveillance. Delays occurred in processing of applications at the Bureau of Alcohol, Tobacco, and Firearms, work on bankruptcy cases was suspended, and recruitment of federal law-enforcement officials was cancelled, including 400 border patrol agents. Veterans affairs programs funded through the appropriations process, and not directly related to inpatient and emergency outpatient health care would also be affected. *For information on which activities would continue, see this [RSC One-Pager](#).*

What Impact Does a Shutdown Have on Mandatory Benefit Programs? As entitlement programs like Social Security and Medicare are funded outside of the appropriations process, they continue to operate during a government shutdown. This should include both the issuance of checks, and the processing of new applications. Issues may arise, however, as the personnel administering the programs are typically paid with funds provided by the appropriations process. Those personnel appear to be exempt from furloughs as they "provide for benefits payments under no-year funds," but their actual reporting status is determined by their agency head. During the most recent government shutdowns, there were serious issues with the Social Security Administration's contingency plans and the number of workers ordered to report fluctuated greatly as the shutdown progressed. This suggests that close attention may be necessary to ensure agencies administering benefit programs provide the services they are statutorily required to provide the public.

Who Gets Paid During a Government Shutdown? Unless an agency receives the funds used to pay its employees from outside the appropriations process –e.g. a self-funded agency such as the U.S. Mint – no employee will receive pay during the funding gap period. Because it accepts their labor to continue exempt activities, an agency is obligated to pay any non-furloughed employee after the conclusion of the funding gap, but agencies are not obligated to pay furloughed employees for the furlough period. **Congress has historically appropriated funds to provide back-pay to furloughed employees, but is under no obligation to do so.** Also, delays are possible for retroactive payments. After the first shutdown concluded in 1995, retroactive pay for furloughed employees was authorized under the continuing resolution that ended the funding gap, but was not disbursed until each agency's appropriations bill was enacted.

Do Military Personnel Receive Pay During a Government Shutdown? As there is no special provision of law providing for the pay or allowances of military personnel during a shutdown, they are treated the same as all other federal employees. Therefore, if no defense appropriations bill is passed prior to a government shutdown and the funding gap extends beyond a pay day for military personnel, they will receive a reduced check. If the funding gap extends throughout the duration of one of the semi-monthly military pay periods, military personnel will receive no payment for that pay period. They will receive back-pay when defense appropriations language is enacted.

What Activities Does the Department of Defense Cease During a Shutdown? Although the Department of Defense considers all active duty military personnel exempt from furlough, it does, according to a [General Guidance memo](#) of August 1998, cease certain activities during a government shutdown. The military will cease to gather general intelligence unrelated to ongoing military operations, and cancel non-essential training exercises and all promotion and administrative boards. Routine medical and dental procedures for non-active duty individuals will be canceled, and new enlistees will be unable to contract with a military service or report for induction.

Sources for the above include the CRS Reports [Shutdown of the Federal Government](#), [Federal Funding Gaps](#), and [Operations of DoD During a Funding Gap](#), and an [OGR Hearing Transcript](#).

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